

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 19**

GALEN HOSPITAL, ALASKA, INC.
d/b/a ALASKA REGIONAL HOSPITAL¹

Employer

and

Case 19-RD-3403

ELIZABETH STARK, an Individual

Petitioner

and

LABORERS' LOCAL 341, affiliated with
LABORERS' INTERNATIONAL UNION
OF NORTH AMERICA, AFL-CIO²

Union

DECISION AND ORDER

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record³ in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.
3. The labor organization involved claims to represent certain employees of the Employer.

¹ The name of the Employer appears as corrected at hearing.

² The name of the Union appears as corrected at hearing.

³ The Employer filed a brief, which has been considered.

4. No question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6)(7) of the Act, for the following reasons:

The Employer is engaged in the operation of an acute-care hospital in Anchorage, Alaska. The petition was filed on April 19, 1999, and requests a decertification election among the Employer's approximately 215 registered nurses. The Employer contends that a contract bar exists. Petitioner contends that the agreement at issue does not constitute a bar. The Union takes no position on the matter.

On September 23, 1996, the Union was certified as the collective bargaining representative of the registered nurses in prior case 19-RC-13248. Subsequent to certification, the parties entered into negotiations. The initial collective bargaining agreement, entitled "Interim Agreement" was signed by the parties on April 12, 1999, and states at the outset that it expires on April 12, 2000. The agreement further states that:

The parties acknowledge that this Agreement is intended as an interim agreement intended to govern the relationship between the parties during negotiations for a final agreement. Nothing in this agreement shall prevent the Hospital and the Union from mutually agreeing to discuss any matter which both parties desire to discuss during the term of this Agreement. . . .

This Agreement shall become effective immediately upon execution by both the Hospital and the Union, and shall remain in effect indefinitely pending negotiation of a final Agreement between the parties' provided, however, that this Agreement shall expire immediately upon execution of a subsequent collective bargaining agreement between the parties with respect to the employees covered by this Agreement or the expiration of one (1) year from the effective date of this Agreement, whichever occurs sooner.

The agreement covers management rights; discharge and discipline; benefits, including a health insurance plan and a retirement plan; wages; union security; dues check-off; and grievances and arbitration. The agreement does not contain any provision for ratification.

It is well-established that in representation proceedings the question as to whether a collective bargaining agreement constitutes a bar is determined from the face of the contract and not from extrinsic evidence. *Frank Hager, Inc.*, 230 NLRB 476 (1977). In *Appalachian Shale Products*, 121 NLRB 1160 (1958), the Board established its policy with respect to contract bar, that is, to serve as a bar, a contract must: be signed by all parties before a petition is filed; contain substantial terms and conditions of employment deemed sufficient to stabilize the bargaining relationship; clearly by its terms encompass the employees sought in the petition; and embrace an appropriate unit. Further, where the contract itself contains no express provision for prior ratification, prior ratification will not be required as a condition precedent for the contract to constitute a bar. Earlier, in *Bridgeport Brass Company*, 110 NLRB 997 (1954), the Board found that a temporary and provisional agreement designed to last only until a new agreement was consummated did not serve as a bar to an election where the agreement at issue was of indefinite duration, that is, it would remain in effect until such time as a "complete" agreement was negotiated by the parties and became effective, and one of the terms of the temporary agreement

was that the parties would commence negotiations for a “complete” agreement when 200 hourly paid employees were working in the plant

Here, the agreement at issue meets all the tests of *Appalachian Shale Products*, and no party contends otherwise. The Employer argues that the agreement herein is distinguishable from that found not to be a bar in *Bridgeport Brass*, in that the agreement herein has a clearly stated expiration date. Thus, the Employer contends that any subsequent agreement entered into by the parties herein prior to the insulated period preceding the April 12, 2000 expiration date would merely be a premature extension to be treated in accordance with the Board’s ruling in *Deluxe Metal Furniture Company*, 121 NLRB 995, 1001 (1958), i.e., it would not bar a petition filed more than 90 but less than 120 days⁴ before April 12, 2000. I agree. Even though the agreement at issue herein is clearly on its face an “interim” agreement, it meets the tests of *Appalachian Shale Products*, supra, and, further, inasmuch as it has an established expiration date, it is more than a mere “stopgap” and is not the type of provisional agreement found not to constitute a contract bar in *Bridgeport Brass*.

Therefore, I conclude that a contract bar exists herein, and I shall dismiss the petition.

ORDER

IT IS HEREBY ORDERED that the petition herein be, and it hereby is, dismissed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 - 14th Street N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by May 28, 1999.

DATED at Seattle, Washington, this 14th day of May, 1999.

/s/ CATHERINE M. ROTH

Catherine M. Roth, Acting Regional Director
National Labor Relations Board, Region 19
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347-4010-2070

⁴ In *Trinity Lutheran Hospital*, 218 NLRB 199 (1975) the Board established the “open” period for the filing of representation petitions involving health care institutions as more than 90 days but not over 120 days prior to the expiration date of the contract.